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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

NO. 80-5677

ORIGINAL COPY

DAVID WENDELL RUGGLES,

Petitioner,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

ON MOTION FOR LEAVE TO FILE AND
PETITION FOR WRIT OF CERTIORARI

RESPONSE OF RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the warrantless search of the contents of an unlocked briefcase found in the trunk of petitioner's car following his arrest was proper under this Court's holding in Arkansas v. Sanders (1979) 442 U.S. 753 61 L.Ed.2d 235, 99 S.Ct. 2586?

JURSIDICTION

The jurisdiction of this Court is invoked pursuant to Title 28, United States Code section 1257(3).

THE PROCEEDINGS BELOW

Petitioner David Wendell Ruggles was charged in a two-count information filed by the District Attorney of

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Los Angeles County with (1) robbery (Cal. Pen. Code, § 211) alleging use of a firearm in the commission of the offense (Cal. Pen. Code, §§ 12022.5, 1203.06) and (2) possession of a firearm by an ex-felon (Cal. Pen. Code, § 12021). The information was subsequently amended to reflect six prior convictions and the case was consolidated with a second case in which a single count was charged against petitioner Ruggles. Petitioner pleaded not guilty, denied the priors and filed a motion pursuant to California Penal Code section 1538.5 to suppress evidence which was obtained from a search of the vehicle he was driving at the time of his arrest.

After denial of petitioner's motion to suppress the evidence, he entered a plea of guilty on the first count of the amended information (robbery and use of a weapon) and admitted three of the prior felony convictions charged. On motion of the district attorney, the second count (possession of a firearm by an ex-felon) and the single count in the second case were dismissed. Probation was denied and petitioner was sentenced to state prison for a term of nine years.

Petitioner thereafter timely pursued an appeal to the Court of Appeal for the Second District of California for review of the denial of the motion to suppress evidence under California Penal Code section 1538.5. The judgment was affirmed on appeal in a decision filed June 16, 1980. (Petn. for Writ of Cert., Appen. B.) Petitioner's petition for hearing in the California Supreme Court was denied on August 13, 1980. (Petn. for Writ of Cert., Appen. A.)

This Petition for Writ of Certiorari seeks review of the order of the Court of Appeal of California, Second Appellate District, dated June 16, 1980.

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STATEMENT OF FACTS
(Facts Relating to the Motion to Suppress)

The facts relating to the motion to suppress evidence were accurately summarized by the California Court of Appeal at pages 3 through 8 of its opinion filed on June 16, 1980 (see Petn. for Writ of Cert., Appen. B) and are reproduced below:

In July 1978 there was a robbery at the Nutel Motel and Ruggles, who was identified by Mr. John Carragher. the manager, was subsequently apprehended by police officers on suspicion of this crime. Defendant's arrest came about as the result of an investigation by Officer Robert McSeveney of the Los Angeles Police Department.

At the 1538.5 hearing, Officer McSeveney testified that in November of 1978 he received information from Sergeant Morosky that Ruggles had participated in various armed robberies including the robbery with an accomplice of a motel in Los Angeles; that Ruggles was on parole for armed robbery; that he lived in San Pedro and drove a black over red Mercury Montego; and that he was a Caucasian male approximately 39 years old, 6 feet tall and weighed around 200 pounds. Officer McSeveney verified this information, which was given to Morosky by an informant, by checking various sources including the police department's records which disclosed that in several robberies Ruggles had posed as a law enforcement officer showing a badge. He also learned that a few days before the robbery of the Nutel Motel, Ruggles was seen in the vicinity posing as a law enforcement officer, and the perpetrator of that robbery had shown a badge, represented that he was with some state department, and had used handcuffs on the victim.

McSeveney, who concluded that Ruggles had committed the robbery of the Nutel Motel, obtained defendant's driver's license

photograph and constructed a showup card including that photograph among six other pictures. Mr. Carragher, who had clearly seen defendant at least twice before the robbery posing as a narcotics agent, identified the person in the driver's license photograph as the robber. Although the officer believed that he then had probable cause to arrest defendant Ruggles, he refrained because he and other officers were still attempting to identify the second suspect involved in the robbery. Police maintained a helicopter surveillance of defendant Ruggles at his San Pedro residence in an attempt to identify the second suspect.

Finally, on January 2, 1979, Sergeant Morosky told Officer McSeveney that defendant Ruggles and a partner would commit a major robbery probably the next day. The defendant was to meet his partner at 8 a.m. on Reseda Boulevard in the San Fernando Valley and they would then proceed to rob a jewelry store possibly in Santa Barbara. The informant said two handguns would be used, one of them a blue steel automatic, and that Ruggles would probably carry one weapon in the small of his back and the second weapon in a briefcase. Officer McSeveney conveyed this information to the surveillance team and also told them that the defendant had been involved in a shoot out in Orange County, that he had multiple prior felony convictions and was to be considered armed and dangerous, and that the team should attempt to stop and arrest Ruggles if it appeared he was leaving Los Angeles County.

Officer Brooks of the surveillance team testified that he received the foregoing information together with a description of defendant Ruggles, the car he was driving, and its license number. As Officer Brooks pulled onto Reseda Boulevard on the morning of January 3, 1979, he saw defendant Ruggles' car and followed him. Defendant parked on the north side of Erwin, got

out of the car and surveyed the street, then opened the trunk and removed a brown attache case which he took with him into an apartment building complex. About 15 minutes later, defendant Ruggles returned to the car, surveyed the street again, then opened the trunk and replaced the brown briefcase therein. He closed the trunk, got into the car, drove down Reseda Boulevard toward the freeway, and finally got onto the freeway and turned westbound. The car, driven by Officer Brooks and other police surveillance units, followed Ruggles until it appeared that he was leaving the county and then the officers decided to stop and arrest him on suspicion of robbery.

A black and white police car with red lights turned on pulled up behind defendant's car when Ruggles stopped his car along the center divider. The police car pulled up directly behind him while Officer Brooks pulled his police car in front of Ruggles' car. Defendant Ruggles immediately got out of his car as other officers carrying guns approached. Defendant complied with their request to raise his hands. He was then ordered to lay down prone, was handcuffed and patted down, and was told that he was under arrest.

As Officer Brooks approached defendant Ruggles, he peered into the vehicle through the open window on the driver's side and saw on the front seat a small hand-held police call scanner. In plain view on the back seat was a syringe and needle and two little vials of the type the officer recognized as those customarily containing narcotics. In the opinion of the officer, the syringe and needle were a "hype" kit and the vial and bottles contained some type of controlled substance. Defendant Ruggles, however, did not appear to be under the influence of drugs or narcotics.

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The officer took the car keys from defendant Ruggles' hand and opened the trunk. In the trunk he found a large police call scanner standing next to the brown briefcase. The officer took the unlocked briefcase out of the trunk, opened it and found inside a holster, a sap, handcuffs, some gloves, a flashlight and a bandana together with an unzipped bag similar to a shaving kit. He found another gun in the unzipped bag. The officer also opened a couple of other bags which he found in the trunk and there he found a three-foot sledge hammer, miscellaneous clothes and a brown cap. In the trunk there was a raincoat, and some Halloween-type masks with tape over the eye holes, and a scanner company manual entitled "Police Frequencies."

Defendant testified on his own behalf that when he noticed a police car behind him on the freeway that morning, he promptly stopped and got out of his car. An officer ordered him to lie down on the ground or he would "blow his fucking head off." When the defendant complied, officers rushed in and grabbed his arms and one of the officers holding a shotgun put his foot on defendant's neck and held him down. While the defendant was still lying down, an officer asked if he could look in his car but the defendant refused. The officers then took the keys from the defendant's hand and opened the trunk.

ARGUMENT

THE CASE PRESENTS NO SUBSTANTIAL QUESTION NOT PREVIOUSLY DECIDED BY THIS COURT

Relying on Arkansas v. Sanders (1979) 442 U.S. 753, 61 L.Ed.2d 235, 99 S.Ct. 2586, petitioner contends the warrantless search of the contents of the unlocked briefcase found in the trunk of the car was invalid. Petitioner argues that the California Court of Appeal ignored this Court's holding in Arkansas v. Sanders, supra, in concluding that the search of

the unlocked briefcase was valid. (Petn. for Writ of Cert., pp. 7-12.) Respondent submits that the California Court of Appeal properly followed this Court's holding in Arkansas v. Sanders in concluding that the search of the briefcase was proper.

The California Court of Appeal below, which cites this Court's opinion in Arkansas v. Sanders in its opinion, concluded that the warrantless search of the briefcase was proper in view of the existence of exigent circumstances. (See Petn. for Writ of Cert., Appen. B, pp. 13-14.) This Court recognized in Arkansas v. Sanders that "special exigencies" may justify the warrantless search of luggage seized from a car following a lawful arrest. (Arkansas v. Sanders, supra, 442 U.S. at p. 763, fn. 11.) Petitioner argues that there are no exigent circumstances in the instant case to justify the warrantless search of the unlocked briefcase. (Petn. for Writ of Cert., pp. 7-12.) Therefore, the only issue presented in this case is a factual one of whether the record supports the conclusion that the officers were justified in opening the briefcase without a warrant in view of the existence of exigent circumstances. Thus, the instant petition fails to present a substantial legal question not previously considered by this Court. (See Arkansas v. Sanders, supra, at p. 753.)

Moreover, the search of the contents of the briefcase in this case can be justified based on this Court's acknowledgment in Arkansas v. Sanders that not all containers removed from a vehicle following a lawful arrest deserve the full protection of the Fourth Amendment. (Arkansas v. Sanders, supra, 442 U.S. at pp. 764-765, fn. 13.) Some containers, such as the briefcase in this case, cannot support a reasonable expectation of privacy

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because its contents could be discerned from its outward appearance. (Id.)

Finally, the search of the briefcase does not present a substantial federal question not previously decided by this Court since the search can be justified on an accelerated booking search theory under this court's decision in Bullwinkle v. California, filed November 17, 1980, in United States Supreme Court Nos. 80-5456 and 80-5263. (See 49 U.S.L.Week 3371 (Jan. 6, 1981).)

A. The Existence of Exigent Circumstances

In Arkansas v. Sanders this Court ordered suppressed the contents of a suitcase seized from the trunk of a taxicab following a lawful arrest. In Sanders the police had information from an informant that Sanders was going to arrive at an airport carrying a green suitcase containing marijuana. When Sanders arrived at the airport, he picked up a green suitcase, placed it in the trunk of a taxicab, and entered the taxicab with another individual. The police subsequently stopped the taxicab, opened the suitcase in the trunk, and discovered the marijuana. In holding that United States v. Chadwick (1977) 433 U.S. 1, 53 L.Ed.2d 538, 97 S.Ct. 2476, controlled the case, the court stated:

> "The only question, therefore, is whether the police, rather than immediately searching the suitcase without a warrant, should have taken it, along with respondent, to the police station and there obtained a warrant for the search. A lawful search of luggage generally may be performed only pursuant to a warrant. In Chadwick, we declined an invitation to extend the Carroll exception to all searches of luggage, noting that neither of the two policies supporting and

warrantless searches of automobiles applies to luggage. Here, as in Chadwick, the officers had seized the luggage and had it exclusively within their control at the time of the search. Consequently, 'there was not the slightest danger that [the luggage] or its contents could have been removed before a valid search warrant could be obtained.' 433 U.S., at 13. And, as we observed in that case, luggage is a common repository for one's personal effects, and therefore is inevitably associated with the expectation of privacy. Ibid."

(Arkansas v. Sanders, supra, 442 U.S. at p. 762.)

Thus, the Sanders court suppressed the contents of the warrantless search of the suitcase from the trunk of the taxicab following a lawful arrest.

The Sanders court acknowledged, however, that exigent circumstances may justify a warrantless search of luggage taken from a vehicle following a lawful arrest. In footnote 11, the Sanders court stated:

"There may be cases in which the special exigencies of the situation would justify the warrantless search of a suitcase. Cf. Cady v. Dombrowski, 413 U.S. 433 (1973) (police had reason to suspect automobile trunk contained a weapon). Generally, however, such exigencies will depend upon the probable contents of the luggage and the suspect's access to those contents -- not upon whether the luggage is taken from an automobile. In the present case the State has conceded that there were no special exigencies. . . .

"Nor do we consider the constitutionality of searches of luggage incident to the arrest of its possessor. See, e.g., United States v. Robinson,

414 U.S. 218 (1973). The State has not argued that respondent's suitcase was searched incident to his arrest, and it appears that the bag was not within his 'immediate control' at the time of the search."

(Arkansas v. Sanders, supra, 442 U.S. at pp. 763-764.)

In the instant case, the Court of Appeal below concluded that the officers were justified in searching the contents of the briefcase without a warrant in view of the existence of exigent circumstances. (See Petn. for Writ of Cert., Appen. B, pp. 13-14.) Respondent submits the record in this case supports such a conclusion. The officers knew that petitioner Ruggles was planning to commit a robbery with a second suspect and that petitioner Ruggles had two handguns in his possession -- one which he carried in the brown attache case in the trunk of the car. Petitioner's car was stopped on the open highway, next to the center divider with a possible confederate waiting to remove the evidence. The briefcase, like the car itself, was mobile and capable of being easily lost or stolen. Also, the "posting of a guard" in the center of the freeway to await a search warrant was highly impractical. Thus, the record amply supports the conclusion that the warrantless search of the briefcase was proper in view of the existence of the exigent circumstances. (See United States v. White (7th Cir. 1979) 607 F.2d 203.)

Since the only issue presented in this case is a factual one of whether the record supports the conclusion that the officers were justified in opening the briefcase without a warrant in view of the exigent circumstances, and does not present a substantial legal question not previously considered by this Court, the Petition for Writ of Certiorari should be denied.

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B. No Reasonable Expectation of Privacy

This Court also made clear in Sanders that warrantless searches of packages and containers removed from a vehicle following a lawful arrest are not always precluded. In footnote 11 the Sanders court stated:

> "Not all containers and packages found by police during the course of a search will deserve the full protection of the Fourth Amendment. Thus, some containers (for example a kit of burglar tools or a gun case) by their very nature cannot support any reasonable expectation of privacy because their contents can be inferred from their outward appearance. Similarly, in some cases the contents of a package will be open to 'plain view,' thereby obviating the need for a warrant. See Harris v. United States, 390 U.S. 234, 236 (1968) (per curiam). There will be difficulties in determining which parcels taken from an automobile require a warrant for their search and which do not. Our decision in this case means only that a warrant generally is required before personal luggage can be searched and that the extent to which the Fourth Amendment applies to containers and other parcels depends not at all upon whether they are seized from an automobile."
> (Arkansas v. Sanders, supra, 442 U.S. at pp. 764-765.)

Thus, as the Sanders court noted, some containers, such as a kit of burglar tools or a gun case, cannot support a reasonable expectation of privacy because their contents may be discerned from their outward appearance. A warrant would, therefore, not be required for these items or any such items falling into the plain view of the police.

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In the instant case, the police had been told by their corroborated informant that petitioner nearly always carried at least one of the weapons he used in his numerous robberies in a brown briefcase. The police observed petitioner remove a brown briefcase from his trunk, visit an apartment complex for 10 to 15 minutes, return again, and place the briefcase in the trunk. (RT 13-14, 16, 24, 40, 43-44.) When Officer Brooks opened the trunk, the brown attache case was sitting right next to a Bearcat Scanner. A manual dealing with police calls was also in plain view in the trunk, not in a locked suitcase. (RT 49-50, 53-54.) Respondent, therefore, submits the totality of the facts and circumstances make it abundantly clear that petitioner's brown attache case could not, in any way, support a "reasonable expectation of privacy." Petitioner's brown attache case located next to the scanner, was, in effect, a virtual gun case not requiring a warrant. (See Arkansas v. Sanders, supra, 442 U.S. at pp. 764-765, fn. 13.)

C. Accelerated Booking Search Theory

Bullwinkle v. California, filed November 17, 1980, in United States Supreme Court Nos. 80-5456 and 80-5263 (see 49 U.S.L.Week 3371) involved an appeal challenging the conclusion in People v. Bullwinkle, 105 Cal.App.3d 82, that an "accelerated booking search" of a purse of a felonee-arrestee is constitutional despite this Court's holding in United States v. Chadwick, supra. This Court dismissed the appeal "for want of a substantial federal question." (49 U.S.L.Week 3371.) Dismissal of appeals for want of a substantial federal question constitutes a decision "on the merits" under Hicks v. Miranda (1975) 422 U.S. 332, 344-345.)

The search of the briefcase in this case can be justified on an accelerated booking search theory. The

California Court of Appeal below relied upon People v. Bullwinkle, supra, in concluding that the search of the briefcase could be justified on an accelerated booking search theory. (See Petn. for Writ of Cert., Appen. B, pp. 15-16.) Since the search of the briefcase can be justified on an accelerated booking search theory, the Petition for Writ of Certiorari fails to present a substantial legal question not previously considered by this Court. (Bullwinkle v. California, filed Nov. 17, 1980, in U.S. Supreme Ct. Nos. 80-5456, 80-5263 (see 49 U.S.L.Week 3371).)

CONCLUSION

Based on the foregoing arguments, respondent respectfully urges that the Petition for Writ of Certiorari be denied.

DATED: January 26, 1981.

Respectfully submitted,

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